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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,088	05/25/2001	Jere F Irwin	IR3-023	5475

21567 7590 06/04/2003

WELLS ST. JOHN ROBERTS GREGORY & MATKIN P.S.
601 W. FIRST AVENUE
SUITE 1300
SPOKANE, WA 99201-3828

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/04/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/866,088

Applicant(s)

IRWIN, JERE F

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 17-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 17-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the inside corner entrance opening as stated in claims 1 and 17 and the complementary opening angle as stated in claim 21 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. The drawings do not depict any reference to these two angles.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The statement found in claims 1 and 17 that an inside corner entrance opening of more than zero degrees, but less than 90 degrees is not found in the written specification. The statement found in claim 21 that a complementary opening angle that is less than a respective one of the inside corner angles is not found in the written specification.

Claims 1-10 and 17-25 are objected to because of the following informalities: Claims 1 and 17 recite structure pertaining to an inside corner entrance opening which has not been shown in the drawings. Claim 21 recites a complementary opening angle which hasn't been shown in the drawings. Appropriate correction is required. Appropriate correction may include the cancellation of the claim(s) or the removal of the objectionable portion of the claim(s). Do not submit new matter.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-10 and 17-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation found in claims 1 and 17 of an inside corner entrance opening of more than zero degrees, but less than 90 degrees is not supported by the original disclosure. The limitation found in claim 21 of a complementary opening angle that is less than a respective one of the inside corner angles is not supported by the original disclosure. **This is a new matter rejection.**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7,8, 10 and 21-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Corelli.

Corelli discloses a container constructed of sturdy, high-impact plastic, the container is lined with an insulating liner 19 made of foam molded polystyrene permanently fixed to the container, the container is a thermal plastic expanded foam rectangular tray inherently capable of holding meat, the tray includes a bottom and side walls extending upwardly and outwardly from the bottom, each of the side walls has a lower section with an inclined inside surface and an upper section, at least one upper section has internal inclined corner surfaces extending upward

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and outward to the lip at the four corners, each corner surface ^{*extending below*} subtending an angle greater than an angle subtended by the respective corner, each inclined corner surface forms an obtuse angle with the bottom wall that is less than a corresponding obtuse angle formed between a corresponding lower wall section and the bottom wall. Corelli comprises a rectangular bottom wall, four side walls extending upward and outward from the bottom wall integrally connected to each other at four perpendicular corners, each corner having an inside corner angle of 90 degrees, each of the side walls having an inclined lower section and an upper section that extends upward terminating in a lip that extends outward around the periphery of the tray, the upper wall section having an alignment corner surface on an inside surface of each perpendicular corner inclined in a vertical plane and extending upward and outward to the lip at each of the four corners, each alignment corner surface in a horizontal plane comprising a curved arc having an inside corner entrance opening defining an angle or complementary opening angle that is less than 90 degrees.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corelli.

Corelli discloses the invention except for the exact angle of inclination of the inclined corner surfaces (although it is known to be greater than 90 degrees as shown by the drawing) and the angle of inclination of the lower sections of the side walls (although it is shown to be

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approximately 120 degrees). It is well known to provide a shallower angle for more access to the top opening in the tray while it is also well known to provide a narrower angle to restrict access. It would have been obvious to modify the angles to be between 94 to 100 degrees for the upper section and the inclined corner surfaces and to be between 110 to 140 degrees for the lower section in order to optimize the access for the upper section and the lower section by design choice.

Claims 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corelli in view of LaFleur.

Corelli discloses the invention except for the inside reinforcing ribs of claim 2 and 9, the arc of greater than 90 degrees of claim 6 and the upper section incline of between 110 to 140 degrees. LaFleur discloses a plastic foam rectangular meat tray with a bottom and side walls, the side walls have an inclined lower section and an inclined upper section that terminates in an outwardly extending lip, the upper section having internal inclined corner surfaces extending upward and outward to the lip, the upper sections of the side walls have inside reinforcing ribs formed therein in which the inclined corner surfaces are indented into the ribs at the corners of the side walls. LaFleur teaches upper sections of the side walls inclined at approximately 120 degrees. It would have been obvious to modify the upper sections of the side walls to have inside reinforcing ribs to provide a container that resists buckling. It would have been obvious to modify the angle of inclination to be between 110 to 140 degrees to modify the access to the container by design choice.

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Claims 6 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corelli in view of Ramirez et al. (Ramirez), Huang et al. ('969), Balzar et al. (Balzar), Reskow and Schubert et al. (Schubert).

Corelli discloses the invention except for the curvature of greater than 90 degrees in the corner. Ramirez teaches a plastic foam rectangular tray for food with a bottom and side walls, the side walls have an inclined lower section and an inclined upper section that terminates in an outwardly extending lip, the upper section having internal inclined corner surfaces extending upward and outward to the lip, the inclined corner surfaces are inclined from a vertical line at angle alpha of 15-40 degrees which makes an angle in the range of 105 degrees ($90 + 15 = 105$) to 130 degrees ($90 + 40 = 130$) with the bottom wall. Ramirez teaches a greater than 90 degree curvature in the corner as shown in Fig. 6. Huang discloses a greater than 90 degree curvature in the corner as shown in Fig. 4. Balzar discloses a greater than 90 degree curvature in the corner as shown in Fig. 4. Reskow discloses a greater than 90 degree curvature in the corner as shown in Fig. 8 and 12. Schubert discloses a greater than 90 degree curvature in the corner as shown in Fig. 8. It would have been obvious to modify the tray to have greater than 90 degree curvature to provide a corner which is wider so than the contents do not get trapped into the corner which would impede access and impede through cleaning of the interior of the container's corners. Also, by such modification each alignment corner surface in a horizontal plane comprises a curved arc covering an angle that covers an inside corner angle of more than 90 degrees, but less than 180 degrees to provide a complementary inside corner entrance opening of more than zero degrees, but less than 90 degrees relative to the respective 90 degree inside corner.

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All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

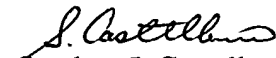
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
May 29, 2003